

AMENDED IN ASSEMBLY AUGUST 17, 2004

AMENDED IN ASSEMBLY JULY 23, 2004

AMENDED IN ASSEMBLY JUNE 29, 2004

AMENDED IN ASSEMBLY MAY 24, 2004

AMENDED IN SENATE JANUARY 5, 2004

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**SENATE BILL**

**No. 391**

**Introduced by Senators Florez and Escutia**

February 20, 2003

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An act to add Chapter 3.5 (commencing with Section 105230) to Part 5 of Division 103 of the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

SB 391, as amended, Florez. Pesticide drift exposure.

Under existing law, the Department of Pesticide Regulation is charged with enforcing pesticide laws and regulations. Existing law establishes the Department of Pesticide Regulation Fund.

Existing law establishes reporting requirements relating to pesticide poisoning, and requires the Office of Environmental Health Hazard Assessment to develop and implement a program to alert physicians and others regarding symptoms, diagnosis, and treatment.

This bill would establish the Pesticide Drift Exposure Response Act to be administered by the department for the purposes of providing education and training and reimbursement to local emergency medical services providers and health care providers for the costs associated with nonoccupational exposure to pesticide drift.

The bill would establish the Medical Reimbursement Account within the fund in which funds recovered for medical costs from persons responsible for a pesticide incident would be deposited.

~~This bill would require the office to develop a program of medical education and training for health care providers and emergency medical services personnel related to pesticide drift exposure.~~ This bill would require the California Environmental Protection Agency to establish minimum standard protocols for these purposes and would require the certified uniform program agency or administering agency to amend the area plan for emergency response accordingly. By requiring local agencies to comply with these requirements, this bill would impose a state-mandated local program.

~~This bill would impose a drift surcharge in an amount necessary to fund the department's cost of regulating the drift caused by restricted and nonrestricted use pesticides. The bill would deposit the proceeds into the fund.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

~~With~~

*This bill would provide for reimbursement of certain costs from the Department of Pesticide Regulation Fund, and with regard to other nonreimbursed mandates, if any, this bill would provide that, if the Commission on State Mandates determines that the bill contains other nonreimbursed costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Chapter 3.5 (commencing with Section
- 2 105230) is added to Part 5 of Division 103 of the Health and Safety
- 3 Code, to read:
- 4

CHAPTER 3.5. PESTICIDE DRIFT EXPOSURE RESPONSE

105230. (a) This chapter shall be known, and may be cited, as the Pesticide Drift Exposure Response Act.

(b) The Legislature finds and declares all of the following:

(1) In prior years pesticide laws and regulations including use restrictions, pesticide posting requirements, buffer zones, and oral notifications have not adequately prevented all pesticide drift exposures.

(2) Unfortunately, large scale pesticide exposures on and off of the agricultural fields have continued to take place, primarily from natural offsite airborne movement or “drift” of pesticides.

(3) Pesticide drift incidents have repeatedly been inadequately handled by emergency response personnel and health care providers and inappropriate treatment of the victims of exposure has resulted.

(4) Lack of coordination among county and state agencies, little training in diagnosis and treatment of illness or conditions resulting from pesticide drift exposure, and lack of related funding have all contributed to the problem.

(5) The purpose of this chapter is to ensure that the victims of pesticide drift exposure receive immediate, comprehensive, and respectful attention during and following pesticide drift exposure incidents.

(c) For the purposes of this chapter:

(1) “Office” means the Office of Environmental Health Hazard Assessment.

(2) “Department” means the Department of Pesticide Regulation.

(3) “Certified Unified Program Agency” or “CUPA” means the agency certified by the Secretary for Environmental Protection to implement the unified program specified in Chapter 6.11 (commencing with Section 25404) of Division 20, within a jurisdiction.

(4) “Administering agency” means the local agency authorized, pursuant to Section 25502.

(5) “Agency” means the California Environmental Protection Agency.

(6) “Nonoccupational exposure to pesticide drift” means that the person exposed to the pesticide was not at the time of the exposure performing work as an employee.

(7) “Fund” means the Department of Pesticide Regulation Fund.

(8) “Medical Reimbursement Account” means the account established within the fund pursuant to subdivision (d) of Section 105231.

105231. (a) The department shall administer this chapter.

(b) The department, in conjunction with the State Department of Health Services and stakeholders representing emergency services providers and health care providers, shall by July 1, 2005, adopt regulations to coordinate a process for reimbursement of local emergency medical services response costs and health care provider costs, including, but not limited to, adoption of a specific reimbursement schedule.

~~(c) The State Department of Health Services shall establish a reimbursement schedule that sets forth a procedure and reimbursement rates to reimburse local emergency medical services providers and health care providers for their costs of providing any of the following services to a person as a result of nonoccupational exposure to pesticide drift:~~

~~(1) Emergency medical services, including, but not limited to, transportation services;~~

~~(2) Medical evaluation and diagnosis;~~

~~(3) Immediate and ongoing treatment for conditions related to the pesticide drift exposure;~~

~~(d) The State Department of Health Services may contract with an agency to administer the claims processing for the medical reimbursement of local emergency medical services providers and health care providers;~~

~~(e) The Medical Reimbursement Account is hereby established within the Department of Pesticide Regulation Fund, the moneys in which shall be available for expenditure for purposes of this chapter upon appropriation by the Legislature.~~

~~(f) provider costs. The regulations shall establish eligibility claim criteria and shall utilize a reimbursement schedule existing immediately preceding January 1, 2005, applicable to reimbursement of costs associated with the provision of emergency medical services.~~

(c) *The department shall determine whether a pesticide exposure incident triggering the need for reimbursement for medical claims has occurred, and the State Department of Health Services shall administer reimbursement for emergency services, health care providers, and individuals who have paid medical bills for these services.*

(d) *The Medical Reimbursement Account is hereby established within the Department of Pesticide Regulation Fund. Moneys in the account shall be available for expenditure for purposes of this chapter upon appropriation by the Legislature.*

(e) In addition to the existing civil penalty authority in Section 12999.5 of the Food and Agricultural Code and Section 6130 of Title 3 of the California Code of Regulations, the Department of Pesticide Regulation, county agricultural commissioners, and district attorneys may recover actual and projected medical costs, including emergency medical transport resulting from a pesticide exposure incident, as set forth in subdivisions (b) and (c), from any person or business responsible for violations of Chapter 2 (commencing with Section 12751) or Chapter 3 (commencing with Section 14001) of Division 7 of the Food and Agricultural Code, or Sections 6000 through 6920 of Title 3 of the California Code of Regulations, that cause or contribute to the pesticide exposure incident in question. Money collected for recovery of medical costs shall be paid into the Medical Reimbursement Account of the Department of Pesticide Regulation Fund.

~~105232. (a) The office shall develop and implement, in cooperation with local health officers, the State Department of Health Services, Occupational Health Branch, directly affected community members, and state and local medical associations, a program of medical education to alert physicians and surgeons, interpreters, and other health care professionals to the symptoms, diagnosis, treatment, and reporting of pesticide poisoning arising from pesticide drift exposure as set forth in subdivision (a) of Section 105235.~~

~~(b) The office shall consult with the Emergency Medical Services Authority regarding the adequacy of emergency services personnel trainings in responding to pesticide drift and shall conduct annual training for emergency personnel, poison control centers, physicians, interpreters, and staff of emergency rooms, clinics, and county agricultural and health departments in the 15~~

1 ~~counties where soil fumigant use is the highest, in all of the~~  
2 ~~following areas:~~

3 ~~(1) The effects of, and the recognition of acute and chronic~~  
4 ~~health symptoms of, pesticide drift exposure.~~

5 ~~(2) The proper treatment of pesticide drift exposure with an~~  
6 ~~emphasis on soil fumigants.~~

7 ~~(3) Pesticide illness reporting requirements and procedures.~~

8 ~~(4) Processes available for the reimbursement of the costs of~~  
9 ~~medical treatment related to pesticide drift exposure.~~

10 ~~(5) The inclusion of a cultural competency component.~~

11 ~~(6) The pesticide drift exposure component of the local~~  
12 ~~hazardous response plans.~~

13 ~~(c) The office shall recover its costs for the administration of~~  
14 ~~this section from the department.~~

15 ~~105233. (a) The office, the department, and the State~~  
16 ~~Department of Health Services shall jointly develop and distribute~~  
17 ~~educational materials for the public and for health care personnel~~  
18 ~~explaining symptoms and treatment of illnesses or conditions~~  
19 ~~related to pesticide drift exposure for each of the 10 pesticides that~~  
20 ~~present the greatest pesticide drift problem and each soil fumigant~~  
21 ~~used in California. The pesticide information shall be in a form that~~  
22 ~~is both understandable by, and accessible to, the intended~~  
23 ~~recipients.~~

24 ~~(b) The office shall allocate funds, in the form of grants or~~  
25 ~~contracts, to eligible state and local agencies, educational~~  
26 ~~institutions, and nonprofit corporations to defray the cost of~~  
27 ~~providing pesticide drift exposure training for emergency medical~~  
28 ~~personnel, including, but not limited to, instructional supplies and~~  
29 ~~trainee expense reimbursement.~~

30 ~~(c) The office and the relevant state licensing agencies shall~~  
31 ~~cooperate to establish continuing medical education courses and~~  
32 ~~related training materials for physicians and surgeons and nurses~~  
33 ~~regarding pesticide drift exposure and consult with the California~~  
34 ~~Specialized Training Institute (CSTI) in the Office of Emergency~~  
35 ~~Services to add training in responding to pesticide drift to~~  
36 ~~hazardous materials courses.~~

37 ~~(d) The office shall recover its costs for the administration of~~  
38 ~~this section from the department.~~

39 ~~(f) The department shall inform medical providers of the~~  
40 ~~availability of the medical reimbursement account through~~

1 *medical training, including, but not limited to, training offered by*  
2 *the office or the State Department of Health Services.*

3 105232. *The office shall consult with the Emergency Medical*  
4 *Services Authority regarding the adequacy of emergency medical*  
5 *services personnel training in responding to pesticide drift.*

6 105234. (a) The agency with the advice and assistance of the  
7 department, the office, county agricultural commissioners, local  
8 health officers, the CUPAs, and directly affected community  
9 members, shall by August 31, 2005, establish minimum standard  
10 protocols for the purposes of amending CUPA area plans.

11 (b) The protocols shall include, but not be limited to, all of the  
12 following:

13 (1) Protocols for requesting and providing immediate access to  
14 pesticide-specific information necessary to assist emergency  
15 medical services personnel in identifying pesticides that may be  
16 causing a pesticide drift exposure incident and appropriate  
17 treatments, including a 24-hour accessible telephone number for  
18 contacting the applicator listed on the notice of intent.

19 (2) Protocols to delineate specific agency responsibilities and  
20 the process for responding to calls, notifying residents, and  
21 coordinating evacuation, if needed.

22 (3) Protocols to establish emergency shelter procedures and  
23 locations to be used in the event evacuation is needed.

24 (4) Protocols to access services in all languages known to be  
25 spoken in the affected area in accordance with Section 11135 of the  
26 Government Code.

27 (5) Protocols to ensure access to health care within 24 hours of  
28 the exposure and up to a week after the exposure.

29 (c) The CUPA or administering agency shall amend the area  
30 plan for emergency response, pursuant to subdivision (c) of  
31 Section 25503, to specifically address pesticide drift exposure and  
32 to incorporate provisions conforming the area plans to the  
33 protocols of subdivision (b).

34 (d) By July 1, 2006, or upon review of the area plan, whichever  
35 is sooner, all CUPAs or administering agencies shall have  
36 incorporated a pesticide drift component into their area plans.

37 (e) The minimum standard protocols developed under  
38 subdivision (a) are not subject to the requirements of Chapter 3.5  
39 (commencing with Section 11340) of Part 1 of Division 3 of Title  
40 2 of the Government Code.



(f) The minimum standard protocols developed under subdivision (a) shall be in accordance with the California Environmental Protection Agency's environmental justice guidelines.

~~105235. (a) The department in conjunction with county agricultural commissioners shall establish a pesticide application public accessibility pilot program of online posting of notices of intent and notices of completion for fumigant applications.~~

~~(b) The accessibility pilot shall be accessible to the department, the commissioners, county environmental health, and emergency medical personnel and the general public with some mapping capacity to enable agencies to determine if any fumigant applications are located within several miles of a complaint of illness, odor, or other indicators of pesticide drift.~~

~~(c) The accessibility pilot shall include an Internet site and a 24-hour accessible telephone hotline for contacting the applicator listed on the notice of intent.~~

~~(d) The accessibility pilot shall take place in \_\_\_\_\_ County.~~

~~(e) The department shall implement the accessibility pilot by September 1, 2005.~~

~~105236. (a) There is hereby imposed a drift surcharge on the mill assessment collected pursuant to Section 12841 of the Food and Agricultural Code.~~

~~(b) The department shall not spend more than it collects from the drift surcharge and the earnings in implementing this chapter.~~

~~(c) To the maximum extent practicable, the drift surcharges shall be assessed on the basis of a pesticide's responsibility for pesticide drift exposure. The drift surcharges shall be set in an amount necessary to fund the department's costs of regulating the drift caused by restricted use and nonrestricted use pesticides.~~

~~(d) The annual surcharge assessment shall be adjusted by the department to reflect the increase in the annual average of the California Consumer Price Index, as recorded by the Department of Industrial Relations, for the most recent year available.~~

~~(e) No surcharge shall be assessed upon a party if that party demonstrates to the department's satisfaction that the party merits an exemption from this chapter because the party's conduct did not contribute in any manner to the toxic effects of pesticide drift exposure.~~



~~(f) The department shall not collect surcharges pursuant to this chapter in excess of the amount reasonably anticipated by the department to fully implement this chapter. In no fiscal year shall the department collect more than 2 mills (\$0.002) in surcharges, as adjusted pursuant to subdivision (d).~~

~~(g) The department shall conduct a review every three years, beginning January 1, 2008, to determine the appropriate levels for assessing the surcharge pursuant to this chapter.~~

~~105237. All surcharges collected pursuant to this chapter shall be deposited into the fund, and all interest earned on the moneys that have been deposited into the account shall be retained in the fund. The revenue derived from the surcharges shall be available for expenditure for purposes of this chapter upon appropriation by the Legislature.~~

~~105238. The department shall enter into interagency agreements with the office, the agency, the State Department of Health Services, and the Emergency Medical Services Authority agreements with the agency and the State Department of Health Services to annually pay those agencies, from moneys within the fund, their share of the state costs of administering this chapter, and shall enter into reimbursement agreements with local agencies to annually reimburse those agencies, from moneys within the fund, for their state-mandated local costs of administering and complying with this chapter.~~

~~105240. The adoption, amendment, or repeal of a regulation for implementing this chapter, including, but not limited to, fee assessment and collection, and subsequent amendments or adjustments authorized by this chapter, are hereby deemed to be emergency regulations necessary for the immediate preservation of the public peace, health, and safety or general welfare. Regulations adopted, amended, or repealed pursuant to this chapter are hereby exempted from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). However, upon adoption, the regulation, amendment, or repeal shall be filed with the Secretary of State and printed in the California Code of Regulations.~~

~~SEC. 2. Notwithstanding Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code, reimbursement of local costs mandated by this act shall, upon~~

1 *appropriation by the Legislature*, be made by the Department of  
2 Pesticide Regulation from funds in the ~~Education and~~  
3 ~~Administration Account within the Department of~~ Pesticide  
4 Regulation Fund, pursuant to reimbursement agreements entered  
5 into with local agencies, under Chapter 3.5 (commencing with  
6 Section ~~10523~~ 105230) of Part 5 of Division 103 of the Health and  
7 Safety Code.

8 However, notwithstanding Part 7 (commencing with Section  
9 17500) of Division 4 of Title 2 of the Government Code, if the  
10 Commission on State Mandates determines that this act contains  
11 other nonreimbursed costs mandated by the state, reimbursement  
12 to local agencies and school districts for those costs shall be made  
13 pursuant to Part 7 (commencing with Section 17500) of Division  
14 4 of Title 2 of the Government Code. If the statewide cost of the  
15 claim for reimbursement does not exceed one million dollars  
16 (\$1,000,000), reimbursement shall be made from the State  
17 Mandates Claims Fund.

